IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 789 (S/S) OF 2001

Rajendra Singh s/o Sri Sher Singh
Village Tanwani, Post Bhaisali, Tehsil Ranikhet,
District Almora . .....Petitioner

Versus

1. The Union of India,
through the Secretary
Ministry of Defence,
New Delhi.

2. C.C.D.A (P) Allahabad
3. Record Office, Bengal Engineering
Group, Roorkee. ..... Respondents

Dated: 7.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Paresh Tripath counsel for the petitioner and Sri Rakesh Thapliyal, Standing Counsel for the Central Government.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to grant disability pension to the petitioner from the date of his discharge from the Indian Army.

Briefly state, the petitioner was enrolled in Bengal Engineering Group of the Indian Army on 29.4.1982 after obtaining the requisite training. The petitioner was remained posted in Bengal Engineering Group in Jammu and Kashmir, Meerut and Pune. In the year 1989 he was selected for E & M Course and was sent to Pune. He developed acute pain in his

chest and due to co-eructation of Aorta. The petitioner had to undergo a major surgical operation in G.B. Pant Hospital, New Delhi and subsequently the petitioner was declared candidate of law medical category. After completing his 17 years service he was retired on 30.4.1999.

The petitioner has submitted that the said deceased was originated during his service and he could not get promotion and retired from the post of Sepoy on which he joined the service in the year 1982. The deceased was aggravated during the military service and is related to military service, therefore, the petitioner is entitled for disability pension. On 8.12.1999, the petitioner was informed that his case of disability pension has been rejected by the opposite party no. 2 on 8.11.1999. Thereafter he preferred an appeal before the respondent no. 1 on 30.12.1999, who dismissed the appeal of the petitioner on 23.10.2000. The petitioner has also preferred second appeal on 12.1.2000.

Respondents have filed counter affidavit and denied the allegations made in the petition. It has been submitted that the claim of the petitioner for disability pension was rejected by the PCDA (P) Allahabad on the ground that the disability of the petitioner as assessed by the Medical Advisor is less than 20% and, therefore, in view of para 173 of the Pension Regulations for Army Par I 1961 the petitioner is not entitled to get the disability pension. As per the release medical board proceedings (AFMSF-16) dated 9.9.1998, the disability of the petitioner was not connected with service. It has been submitted by the respondents that petitioner was advised to prefer a second appeal directed to Government of India. However, ignorance was pleaded regarding pendency of second appeal.

I have heard the learned counsel for the parties and have perused the record.

From the record, it appears that the petitioner has served in the army for 17 years and according to the petitioner he is entitled for the payment of disability pension in accordance with Rules.

Para 173 of Pension Regulation reads as under:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

Rule 3, 4 and 7 of Appendix II are relevant and, therefore, are quoted below:

3. There must be a casual connection between disablement and military service for attributability of aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases.

7. In respect of disease, the following rules will be observed.:

(a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course

of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) If the disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts in the aetiology of the disease and of its normal development to the effect that conditions of service e.g. exposure, stress climate, etc may have had on its manifestation. Regard must also be had to the time factor.

Sri Paresh Tripathi, Counsel for the petitioner has relied upon the judgment of this Court dated 13.7.2005 passed in Writ petition No. 1543 of 2001 (SS) Ex Sepoy Kheyali Dutt Joshi vs. Union of India & others. In that judgment this Court has observed as under:

"The question of disability pension came up for consideration in the case of Shiv Murti Rai v. Union of India, (1997) 2 U.P.L.B.& E.C. 1179, Allahabad High Court in a similar case has held as under:

"In the present case, there is no material to suggest tht any indepth study was made at any stage regarding direct and circumstantial evidence which was necessary for deciding issue of entitlement. Further, if the Medical Board could not precisely and with certainty point out the real cause, the benefit of reasonable doubt ought to hve gone in favour of petitioner. In respect of disease as provided in Rule 7 (b), a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance in military service. In the present case it is not disputed that at the time the petitioner joined the service, he did not suffer from any ailment and no note of such kind was made in his service record. The medical opinion did not record any reason for saying that it is not connected with military service though the disease could be caused by stress and strain. Petitioner was not engaged on sedentary duties. He was in active military service which required physical and mental strains. In the facts and circumstances of the case in my opinion the deeming

clause was fully application in the present case. The deeming provision provided in Rule 7 (b) created a presumption that disability has been caused due to military service and for rebutting this presumption there should have been strong, valid and cogent reasons to rule out that the disease could be attributed to the military service. There is total absence of such reasons."

The observations made in this case has been followed in the case of Inder Jang v. Union of India (1999) 3 UPLBEC 2010.

In the case of Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

" In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury or illness. Sanction of disability pension therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations."

The Apex Court in the case Madan Singh Shekhawat vs. Union of India, (1999) 6 SCC 459 observed as under:

It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 : (1949) 2 KB 481 Lord Denning, L.J. (as he then was) held:

"[When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

According to the petitioner he had submitted second appeal to the respondent no.1 on 12.1.2000, which is still pending there.

In view of above proposition of law, the respondent no.1 is directed to decide the second appeal in the light of decisions of this Court as well as the Apex Court, granting disability pension to the petitioner within a period of one month after obtaining certified copy of this order. There will be no order as to costs.

Dated: 7.3.2006 **Rajesh Tandon J.**

*Dhyani